

February 14, 2018

Mr. Henry A. Leskinen
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, MD 21057

Re: 9137 & 9145 Raxis Avenue
Forest Conservation Variance
Tracking #06-18-2644

Dear Mr. Leskinen:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on January 9, 2018. This request seeks a variance to remove three specimen trees: a 38-inch DBH silver maple in poor condition, and two 30-inch DBH silver maples in very poor condition. The six other specimen trees onsite will not be impacted by developing the proposed three-lot minor subdivision.

The Director of the Department of Environmental Protection and Sustainability (DEPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of the property. The applicant is seeking to construct three new single family homes and associated infrastructure on two lots formerly containing one single family home and several outbuildings, all of which were razed in the last year. While retention of these trees may preclude the development of three new houses, the development plan could be redesigned to avoid the specimen trees and still construct at least one replacement dwelling on the property. Therefore, full application of the law would not deprive the applicant of all beneficial use of the property. Consequently, we find that this criterion has not been met.

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The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. Removal of the three specimen trees in poor condition is necessary to accommodate site grading, the construction of two of the new houses, and installation of stormwater quality management devices rather than general conditions of the neighborhood. Therefore, the petitioner's plight is not associated with general conditions in the neighborhood; thus, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood is within a designated growth area of Baltimore County and consists of a mix of high density residential and commercial development. In fact, the properties to the north and west of the site have recently been approved for high density residential development. The subject property previously contained a single family home and several large outbuildings, so the construction of three single family homes on the site will not alter the essential character of this neighborhood. Therefore, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. While the requested variance will allow the petitioner to remove three specimen trees that provide benefit to water quality, the project will not impact any floodplains, streams, steep slopes, associated buffer areas, or forest. Additionally, the applicant will provide 0.2 acre of onsite forest planting within a proposed Forest Buffer & Forest Conservation Easement, which will reduce stormwater runoff, sedimentation, and pollutant loadings. As a result, the proposed variance will not adversely affect water quality, so this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of DEPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. The specimen trees to be removed are in poor condition, and 0.2 acre of onsite planting will take place to fulfill project's afforestation requirement under the Forest Conservation Law. Furthermore, no forest is to be cleared. Therefore, this variance is consistent with the spirit and intent of Article 33 of the Baltimore County Code and this criterion has been met.

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Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code. Mitigation for removal of these trees is not required given their poor condition. However, the following note must be on all subsequent plans for this development project:

A variance was granted on February 14, 2018 by Baltimore County Dept. of Environmental Protection & Sustainability to allow the removal of three specimen trees. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met in developing the minor subdivision.

This variance approval does not exempt future development activities at this site or future removal of specimen trees from compliance with Baltimore County's Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Deputy Director

c. HDC Rental 2, LLC

DVL/lbe